IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

CRL.A.No. 522 of 2000()

CRA.130/1998 of SESSIONS COURT, THRISSUR
CC.586/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VADAKKANCHERY

.....

APPELLANT:

A.M.NARAYANAN,
LEDNI NIVAS,
P.O. MINALLUR,
MINALLUR VILLAGE,
THALAPPILLY TALUK.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS:

---

1. C.A.JOSE,
S/O.ANTONY,
CHITTILAPPILLY VEETIL,
AMBALAPPAD DESOM,
THEKKUNKARA VILLAGE,
THALAPPILLY TALUK.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.522/2000-C

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 20th day of September, 2007

J U D G M E N T

The appellant is the complainant who had initiated proceedings under Section 138 of the Negotiable Instruments Act. The accused was convicted by the trial court but acquitted by the appellate court.

2. The case of the complainant is that he provided a loan of Rs.1,40,000/- to the accused and towards the discharge of the same the accused issued the impugned cheque for Rs.1,40,000/- dated 13/12/1995, which when presented got dishonoured as the payment stopped. The lawyer notice sent was not replied to. Subsequently, reply notice was received which is sent after filing of the complaint.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 to P6. PW.1 is the complainant who has testified as to the transaction. It was brought out in the cross-examination that he had also initiated civil proceedings against the accused as O.S.No.1467/1995 for specific performance of agreement for sale of the property owned by the accused and the property involved in the civil suits is three cents and three shop rooms situated therein. It was also brought out that the sale agreement is dated 23/03/1995. The date of

the loan is 22/03/1995. The date of execution of agreement specified in the agreement would be over by 23/09/1995. Hence, he instituted the civil proceedings, it is submitted.

4. The appellate court has found in the above circumstances that he paid Rs.1,40,000/- on 22/03/1995 and again paid Rs.1,00,000/- on 23/03/1995 as advance for the purchase of the property as a strong circumstance in favour of the case set up by the defence that when the accused borrowed Rs.1,00,000/- a blank cheque was given. In the cross-examination PW.1 has asserted that no other signed paper has been received along with the impugned cheque. The suggestion that along with the blank cheque he also obtained signed stamp papers and white papers has been denied. In Ext.P5 reply notice it is mentioned that the balance amount due is only Rs.97,000/- and that he has remitted interest till date and also Rs.3,000/- towards the principal. But no such suggestion to the above effect has been put to PW.1 when he was in the witness box. Of course, in the circumstances it appears that he might have misused the blank stamp papers. He would have received the same. But the same has no answer to the prosecution herein wherein the accused admits that he has received Rs.1,00,000/- towards loan. The dispute is only with respect to Rs.40,000/- which according to the

accused is added to Rs.1,40,000/- and the blank cheque misused. I find that in the light of the admission of the accused as to his signature in the impugned cheque in the circumstances that he has admitted the fact that Rs.1,00,000/- was borrowed and in the circumstances that no contra evidence has been adduced and that the reply notice has been sent only after the proceedings have been initiated, prove the case of execution of the cheque. The statutory presumptions stands unrebutted. I find that the decision of the appellate court cannot be upheld. The same is set aside. The respondent/accused is convicted for the offence under Section 138 N.I.A and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.1,40,000/- to PW.1 and in default to undergo simple imprisonment for three months. The respondent/accused is granted six months time to remit the compensation amount. He shall appear before the Judicial Magistrate of the First Class, Wadakkanchery, on 20/03/2008 to receive the sentence. The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.522/2000-C

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

20th September, 2007